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IN THE

Supreme Court of the United States

THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO),
Petitioner

and

UNITED STATES OF AMERICA,
Petitioner

v.

GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amici Curiae of the Washington Counties of San Juan, Clallam, Jefferson, and Pacific in Support of Respondents

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INTERESTS OF THE *AMICI CURIAE* WASHINGTON COUNTIES [1]

Even before political boundaries were drawn in the Pacific Northwest the people who lived in what are now San Juan, Clallam, Jefferson and other Washington counties drew their sustenance from the salt waters of Puget Sound and the Washington Coast. The location of these counties makes the people who live, work and play here most affected by the outcome of this case.

Each of the *Amici* counties borders the salt water of Washington State. Within Puget Sound, each county's boundaries extend to the Canadian border or to the middle of adjoining waterways such as the Strait of Juan de Fuca, Rosario Strait, Haro Strait, and Boundary Pass.[2] Along the Washington coast, each county's boundary extends three miles beyond the land.[3] San Juan County, an archipelago of 172 named islands, is located in the geographic center of Puget Sound, surrounded by shipping lanes which channel tanker traffic between the mainland United States and Vancouver Island, Canada. These are the same shipping lanes used by oil tankers bound for Ports in Skagit and Whatcom counties, and Vancouver, British Columbia, the largest shipping port in Canada. Other islands are spread throughout the shipping lanes of lower Puget Sound as far south as Seattle and Tacoma.

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[1] This Amici Curiae brief is submitted by the authority of the law officers (Prosecuting Attorneys) of the respective counties pursuant to Court Rule 37(4). No counsel for a party authored this brief in whole or in part. No person or entity other than the Amici Curiae has made a monetary contribution to the preparation or submission of this brief.

[2] See, e.g. R.C.W. § 36.04.280 (San Juan County); and .050 (Clallam County); and .160 (Jefferson County).

[3] See *United States v. Alaska*, 521 U.S. 1, 5, 117 S.Ct. 1388, 1392, 138 L.Ed.2d 231 (1997).

The people in these Washington counties have "local knowledge" of the waters and the very real hazards to navigation. They and their local elected officials have been and will be the first to respond to any oil spill that occurs. It is their beaches which will be covered with oil; their wildlife which will be killed; and their way of life which will be harmed by an accident in Puget Sound or the Straits. The geographic location of these counties gives them a special perspective on the issues before the Court. It is this unique perspective which leads the counties to support the regulations by the State of Washington to reduce the likelihood of an oil spill. As will be evident, this short statement does not merely repeat arguments of the parties before the court.

ARGUMENT

For thousands of years the Indians of the Northwest Coast of Washington lived off the bounty of the waters of the Straits of Georgia and Juan de Fuca, and Puget Sound. The waters teemed with salmon, rockfish and cod. The shorelines of hundreds of islands were thick with clams, oysters and mussels that lived on the submerged mountains whose tops poke through the surface of this inland sea.[4]

In 1792, Captain George Vancouver, who was no stranger to beauty having just come from the South Seas, sailed into these waters in his ship *Discovery* and described the paradise he found:

> . . . The country before us exhibited everything that bounteous nature could be expected to draw into one point of view. As we had no reason to imagine that this country had ever been indebted for any of its decorations to the hand of man, I could not possibly believe that any

[4] Joint App. 173-179. Affidavit of Morris W. Barker.

> uncultivated country had ever been discovered exhibiting so rich a picture.[5]

These shorelines, nurtured by the waters of the Straits and the Sound, are no less beautiful or alluring today. Hundreds of miles of beaches in Clallam, Whatcom, Skagit and Jefferson counties protectively encircle the 172 named islands of San Juan County, the only county in the contiguous United States composed entirely of islands.

The sea and the web of life it supports are the heartbeat of the islands and Puget Sound. Fishing has been an integral part of life for the people of the area. Small sailing vessels fished the waters as early as 1850. Ships would pack their catch in salt and then sell it in Seattle or Victoria, Canada. Soon fish salting plants, and later, numerous canneries were operating in the area. But fishing, especially salmon fishing, has declined because fewer and fewer fish have become more difficult to catch.[6]

Today, visitors come by the millions from all over the world to drink in the beauty.[7] They paddle kayaks along the unspoiled shorelines, watch pods of Orca whales making daily trips up and down Georgia Strait or simply gaze in awe at the scenery from the decks of the Washington State Ferries, which provide the only public link between the Islands and the mainland. Like the original Native Americans, they savor the food that comes from the sea: Dungeness crab, five kinds of salmon, rockfish, abalone and shrimp are only some

[5] May 2, 1792 Journal entry of Captain George Vancouver, *Vancouver's Discovery of Puget Sound*, by Edmond S. Meany, Binford & Mort, Publishers (1957).

[6] On March 2, 1999, the U.S. Fish and Wildlife Service issued a final rule listing the Chinook Salmon in Puget Sound as threatened and other populations as endangered. 64 Fed. Reg. 41835 (1999).

[7] Joint App. 180-190. Affidavit of Susan Zemek.

of the bounty which makes its way to tables and restaurants throughout the region and the world.[8]

Not only visitors and residents seek rejuvenation and sustenance from these surroundings. Five million birds of 125 species come here to feed, court and rest on their journeys to wintering and breeding grounds.[9] Dungeness Spit is just one of three National Wildlife Refuges within the Department of Interior which exist to protect the millions of nesting, wintering and migrating marine birds. Congress has also recognized the national value of the region by providing for the designation of the Olympic Coast National Marine Sanctuary,[10] and directing the National Oceanic and Atmospheric Administration to evaluate the suitability of other portions of the Puget Sound for inclusion in the Marine Sanctuary system.[11] It is no coincidence that the University of Washington has chosen the San Juan Islands as the place to locate their internationally known Marine Laboratories.

The people who live here are tenacious, protective and passionate. Protection of the natural resources is seen as a duty and an obligation, to their self, their state and their Nation.[12] The historical roots of this obligation trace their way back to the now famous warning of Chief Seattle in 1854 when the Suquamish tribe gave up its claim to the land and waters of Puget Sound:

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[8] Joint App. 173-179. Affidavit of Morris W. Barker.

[9] Joint App. 161-172. Affidavit of Dennis Paulson.

[10] P.L. 100-627 and 59 Fed. Reg. 24586 (1994), 15 CFR Part 925.

[11] 54 Fed. Reg. 41481 (1989).

[12] For example, in 1977, Washington Senator Warren Magnuson authored amendments to the Marine Mammal Protection Act (P.L. 95-136) which recognized the "fragile and important" national asset of natural resources and the waters of Puget Sound and acknowledged the threat to it by ships carrying crude oil in bulk.

This we know: All things are connected like
the blood that unites us,
We did not weave the web of life,
We are merely a strand in it.
Whatever we do to the web, we do to ourselves.

We love this earth as a newborn loves
its mother's heartbeat.
If we sell you our land, care for it as we have cared for it.
Hold in your mind the memory of the land as it is
when you receive it.
Preserve the land and the air and the rivers for your
children's children and love it as we have loved it.[13]

* * *

The State of Washington is the steward for this land and these waters. It is the State and the people of the State along with our natural resources which are imperiled when a tanker runs aground or spills fuel or oil into our waters. This threat is real. Navigation in Puget Sound can be treacherous.[14] Persistent fog, wind, waves, strong currents, long hours of darkness and narrow channels such as Guemes Channel in Skagit County[15] make navigation difficult, and magnify the risk when something goes wrong.

In 1985, the tanker *Arco Anchorage* spilled 239,000 gallons at Port Angeles Harbor in Clallam County.[16] Last year, the Liberian tanker *New Endeavor* and the Italian tanker *Angelo D'Amato*, with combined cargoes of approximately 36 million gallons of oil sent out distress signals at the same

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[13] Chief Seattle's speech during 1854 Treaty Negotiations, as adapted by Susan Jeffers in *Brother Eagle, Sister Sky*, Dial Books (1991).

[14] Joint App. 124, Affidavit of Stanley I Norman, Commander, United States Coast Guard (Retired) and Program Director for Policy and Planning at the Washington State Office of Marine Safety (OMS) who concludes that "Puget Sound is considerably more difficult to navigate than Prince William Sound where the Exxon Valdez disaster occurred."

[15] Joint App. 122-123, Affidavit of Stanley I. Norman.

[16] Joint App. 65, Affidavit of C. Jonathan Neel.

time. Though carrying proper charts may seem like a common sense rule, in July 1999 the Maltese tanker *Parnar* and the Liberian tanker *Davids Siketross* entered the Washington waters without appropriate nautical charts, thereby jeopardizing the pristine shores of the State of Washington, San Juan, Clallam, Jefferson and other counties. These same tankers have only profits to be made from the transportation of their oil to refineries. It is the people of the Sound who bear the total risk of having their homeland destroyed.

This is the backdrop that provided the political and legal support for the Washington rules that provide the "Best Achievable Protection" for Puget Sound and the Washington Coast.[17] These rules do not erect a gate at the opening to the Juan de Fuca Strait. Rather, these rules adopt reasonable requirements to protect the State's irreplaceable resources. The State has acted in response to authority from Congress.[18] Congress knows well how to grant authority to the states in the area of maritime commerce and knows well how to take that right away.[19]

The citizens of Washington should not have to wait until there is an *Exxon Valdez* tragedy in Puget Sound for the next round of federal rules or agreements enhancing the safety of tanker traffic. The Washington rules provide a huge protection for the *Amici* Washington counties, their citizens, and the citizens of the state of the Nation.

The paradise "discovered" by Captain Vancouver in 1792 was not "indebted for any of its decorations to the hand of man." The Washington rules seek only to ensure that no

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[17] Wash. Admin. Code Chapter 317-21.

[18] OPA 90 section 1018(a) and (c), State App. at 46a-47a, 33 USCA section 2718.

[19] See, e.g. *Ray v. Atlantic Richfield Co.* 435 U.S. 151, 98 S. Ct. 988, 55 L. Ed.2d 170 (1978).

"decoration of the hand of man" will ever desecrate the waters that have inspired and sustained people since long before Captain Vancouver sailed the straits and Puget Sound.

CONCLUSION

This Court should affirm the Ninth Circuit and uphold the rules that provide for the best achievable protection in tanker operations.

Respectfully Submitted,

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APPENDIX

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